

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

PATRICK D. LEGGETT;
KATHERINE F. LEGGETT;
GEORGE D. MCKAIN, by his
attorney in fact, ANITA
KATHRYN MCKAIN GREER;
and ADELE S. MCDOUGAL,

Plaintiffs,

v.

Civil Action No. 1:13-cv-0004 FPS
Honorable Frederick P. Stamp, Jr.

EQT PRODUCTION COMPANY,
a Pennsylvania corporation; ET AL.,

Defendants.

PLAINTIFFS' PROPOSED FACTS, CERTIFIED QUESTIONS AND RECORD

Now comes plaintiffs and file herewith their “portion of record to be submitted,” “proposed certified questions” and “proposed facts.” The parties have not been able to agree to all issues.

1. Does the *Tawney* decision have any effect upon the Court’s decision as to whether a lessee of a flat-rate lease, converted pursuant to *W. Va. Code, Ch. 22, Art. 6, Sect. 8*, may take post production expenses from his lessor’s royalty, particularly with respect to language in the statute providing for “1/8 at the wellhead” found in *W.Va. Code §22-6-8(e)*?

2. Does *W. Va. Code, §22-6-8* prohibit flat-rate royalties only for wells drilled or reworked after the statute’s enactment and modify only royalties paid on a per-well basis where permits for new wells or to modify existing wells are sought, or do the provisions of *W. Va. Code, §22-6-8* abrogate flat-rate leases in their entirety?

PLAINTIFFS' PROPOSED FACTS AND RECORD

1. Plaintiffs Patrick D. Leggett; Katherine F. Leggett; George D. McKain, by his attorney in fact, Anita Kathryn McKain Greer; and Adele S. McDougal are all owners of undivided interests in certain oil and natural gas mineral interests which are described in that certain lease dated October 31, 1906, and recorded in the Office of the Clerk of the County Commission of Doddridge County, West Virginia at Deed Book 21, Page 76. This lease is known as the Jackson Leeson Lease (the "Lease").

2. Plaintiffs Patrick Leggett and Katherine Leggett are the owners of a 12.5% undivided interest in the oil and gas on the Lease.

3. Plaintiff Anita Kathryn McKain Greer is the duly appointed attorney in fact for Plaintiff George D. McKain, who owns a 12.5% undivided interest in the oil and gas on the Lease.

4. Plaintiff Adele S. McDougal, owns a 50% undivided interest in the oil and gas on the Lease.

5. The owners of the remaining 25% interest in the oil and gas on the Lease are not parties to this action.

6. EQT Production Company is the successor-in-interest to The Philadelphia Company of West Virginia and the current lessee of the Lease, with the exclusive right to produce, market, and sell oil and natural gas from the Lease premises.

7. The Lease provides for the payment of a "flat-rate" royalty of \$300/annum for natural gas wells drilled upon the leased premises.

8. On March 13, 1982, West Virginia Code §22-6-8, referred to as the Flat-Rate Statute, was enacted, and became effective 90 days thereafter.

9. There are nine wells on the Lease. Some of these wells are subject to the provisions of W. Va. Code §22-6-8, requiring EQT Production Company, as lessee, to pay royalties to Plaintiffs for those wells in accordance with the Statute's terms.

10. EQT Production has paid a flat-rate royalty to Plaintiffs for wells on the Lease premises where no permit was issued.

11. EQT Production Company pays royalties to Plaintiffs based on a 1/8 royalty basis less certain post-production expenses for wells on the Lease that are subject to the Flat-Rate Statute.

Further, as directed by the Court's Order entered on January 22, 2016, the parties hereby agree that the following portions of the record should be included with a Certification Order:

1. Amended Complaint (ECF 52);
 2. EQT Production Company's Partial Answer and Affirmative and Other Defenses to Plaintiffs' Amended Complaint (ECF 67);
 3. Motion for Summary Judgment of EQT Production Company, with exhibits (ECF 152);
 4. Memorandum in Support of EQT Production Company's Motion for Summary Judgment (ECF 153);
 5. Plaintiffs' Response in Opposition to Motion for Summary Judgment of Defendant EQT Production Company, with exhibits (ECF 162);
 6. EQT Production Company's Reply to Plaintiffs' Response in Opposition to Motion For Summary Judgment (ECF 164);
 7. Correspondence to the Court forwarding a legible copy of the Lease (ECF 167);
- and,

8. Memorandum Opinion and Order Granting in Part Defendant EQT Production Company's Motion for Summary Judgment, Granting Remaining Defendants' Motion for Summary Judgment, and Deferring a Ruling as to the Breach of Contract Claim Against Defendant EQT Production Company (ECF 174).

THE KAY COMPANY, LLC,
H. DOTSON CATHER, Trustee
of Diana Goff Cather Trusts,
and JAMES E. HAMRIC III,
and all other persons and
entities similarly situated,

By Counsel

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CERTIFICATE OF SERVICE

I, Marvin W. Masters, hereby certify that on February 4 2016, I electronically filed “Plaintiffs’ Proposed Record and Certified Questions” with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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